

**SUBGRANT AGREEMENT
BROWNFIELDS CLEANUP REVOLVING LOAN FUND**

I. PARTIES

THIS AGREEMENT is effective September 15, 2017, by Roundup Public Schools, hereinafter referred to as the "SUBGRANT RECIPIENT," and Snowy Mountain Development Corporation (SMDC) on behalf of Central Montana Brownfields Coalition, the GRANT RECIPIENT, hereinafter referred to as "SMDC".

II. DEFINITIONS

Project - Hazardous material (asbestos & lead paint) abatement of property located in Roundup, MT in Musselshell County, MT which is owned by Roundup Public Schools.

Subgrant Recipient – Roundup Public Schools

Grant Recipient - Snowy Mountain Development Corporation (SMDC) on behalf of Central Montana Brownfields Coalition

Site Manager - Representative from Roundup Public Schools, in cooperation with a hired environmental professional.

Sub-Contractor(s) - The contractor(s) hired by Roundup Public Schools, Snowy Mountain Development Corporation, or by a hired environmental professional to perform work on this project.

Qualified Environmental Professional (QEP) –Environmental Professional designated by the Grant Recipient (SMDC) to coordinate and direct cleanup. The QEP assists the Grant Recipient in carrying out its responsibilities on a site specific basis, and works on behalf of the Grant Recipient to ensure that RLF environmental cleanup actions are conducted in accordance with applicable laws and regulation

CERLCA - Comprehensive, Environmental Response Compensation and Liability Act, Brownfields Revitalization Act

BRLF– Snowy Mountain Development Corporation (SMDC) Brownfields Revolving Loan Fund (per Cooperative Agreement No: BF- 96809001) between SMDC and the United States Environmental Protection Agency.

Eligible Activities – The response actions associated with actual cleanup of the site and allowable under a scope of work as approved by EPA and MDEQ.

III. REPRESENTATIONS AND WARRANTIES

WHEREAS, SMDC is the recipient of a United States Environmental Protection Agency (USEPA) grant to establish a Brownfields Revolving Loan Fund (BRLF) and authorized to make certain loans and subgrants from these funds (Loan Fund); and

WHEREAS, SMDC is responsible to the USEPA for proper expenditure of BRLF funds; and

WHEREAS, BRLF funds are to be used to undertake cleanup of brownfields sites by making loans and/or subgrants to parties willing to undertake cleanup of these sites; and

WHEREAS, the SUBGRANT RECIPIENT is the owner of certain real property located in Roundup, MT in Musselshell County, MT, this property is more particularly described in Exhibit I, incorporated herein; and

WHEREAS structures on the Property are contaminated with hazardous substances; and

WHEREAS, the Environmental Protection Agency (EPA) has determined that the Property is eligible for cleanup activities funded under SMDC's BRLF Grant.

IV. CERTIFICATIONS

NOW THEREFORE, in consideration of the covenants and promises contained herein, it is mutually agreed by and between the parties as follows:

1. The SUBGRANT RECIPIENT shall use subgrant funds only for eligible activities and in compliance with the requirements of CERCLA 104(k), 2CFR 200 & 1500, OMB Circular 87, and all other applicable Federal and State laws and regulations.
2. The SUBGRANT RECIPIENT understands and agrees that any and all work performed on the Property which qualifies for reimbursement under SMDC's BRLF is conditioned upon the SUBGRANT RECIPIENT'S requirement of its project contractors' and subcontractors' full compliance with the approved Contract Agreement and this Agreement.
3. The SUBGRANT RECIPIENT understands that all changes or modifications to the Contract Agreement must be approved by the QEP prior to the change or modification becoming effective.
4. The SUBGRANT RECIPIENT shall ensure that the cleanup is protective of human health and the environment.
5. The SUBGRANT RECIPIENT shall maintain Project information including properly executed contracts, invoices, correspondence and other documents sufficient to evidence in proper detail the nature and propriety of the cleanup and expenditures of subgrant funds. The SUBGRANT RECIPIENT shall maintain records for a minimum of three years following completion of the cleanup financed all or in part with RLF funds and shall obtain written approval from SMDC prior to disposing of records. SUBGRANT RECIPIENT shall provide to SMDC and authorized representatives of the Federal government, access to records relating to this subgrant.
6. SUBGRANT RECIPIENT certifies that they are not currently, nor have they been, subject to any penalties resulting from environmental non-compliance at the site.
7. SUBGRANT RECIPIENT certifies that they are not a viable responsible party or potentially liable for contaminants at the site.
8. SUBGRANT RECIPIENT shall conduct cleanup activities as required by SMDC's designated Qualified Environmental Professional (QEP) and SMDC.

9. **SUBGRANT RECIPIENT** shall comply with applicable EPA assistance regulations 2 CFR Parts 200 and 1500 for nonprofit organizations). All procurements conducted with subgrant funds must comply with 2 CFR Parts 200 and 1500, as applicable.
10. **SUBGRANT RECIPIENT** shall comply with Davis-Bacon Act prevailing wages for all construction, alteration and repair contracts and subcontracts awarded with EPA grant/loan funds.
11. **SUBGRANT RECIPIENT** shall comply with Federal cross-cutting requirements that include, but are not limited to, MBE/WBE requirements found at 40 CFR 33; OSHA Worker Health & Safety Standard 29 CFR 1910.120; the Uniform Relocation Act; National Historic Preservation Act; Endangered Species Act; and Permits required by Section 404 of the Clean Water Act; Executive Order 11246, Equal Employment Opportunity, and implementing regulations at 41 CFR 60-4; Contract Work Hours and Safety Standards Act, as amended (40 USC 327-333) the Anti Kickback Act (40 USC 276c) and Section 504 of the Rehabilitation Act of 1973 as implemented by Executive Orders 11914 and 11250.

V. SUBGRANT TERMS AND CONDITIONS

12. **Subgrant Period.** The period of the Subgrant Agreement shall be from September 15, 2017, until March 15, 2017.
13. **Subgrant Amount.** Subject to the terms and conditions of this Agreement, SMDC agrees to provide subgrant funds to the SUBGRANT RECIPIENT up to the amount of One Hundred Thousand Dollars and No/100 cents (\$100,000.00).
14. **Disbursement.** Subgrant funds shall be payable, in the form of draw requests, to the SUBGRANT RECIPIENT upon receipt by SMDC of the invoices for project work performed. Documentation of all funds expended by Roundup Public Schools must be provided to SMDC.
15. **Sale of Property.** In the event the SUBGRANT RECIPIENT liquidates the Property funded under this agreement by selling it to a for-profit entity, the SUBGRANT RECIPIENT agrees to reimburse SMDC the lesser of: sales price (less applicable closing expenses) or 100% of the amount funded under this agreement. This stipulation shall remain in effect for five (5) years after closeout as identified by SMDC.

VI. COVENANTS OF SUBGRANT RECIPIENT

16. **Performance.** All project work performed pursuant to this Agreement and with subgrant funds shall be performed by a qualified, competitively selected contractor consistent with good practices and industry standards.
17. **Contracts.** The SUBGRANT RECIPIENT shall provide SMDC with copies of all bids and contracts for all work required for hazardous substance (methamphetamine) abatement. SUBGRANT RECIPIENT agrees to comply with all local, state, and Federal contracting and bidding requirements.

18. **Permits, Licenses, Inspections, Compliance.** The SUBGRANT RECIPIENT shall be responsible for obtaining all permits, licenses, approvals, certifications and inspections required by Federal, state or local law and to maintain such permits, licenses, approvals, certifications and inspections in current status during the term of this Agreement. The SUBGRANT RECIPIENT shall also be responsible for posting, reporting, and compliance regarding Davis-Bacon Wage Laws.
19. **Site Access.** The SUBGRANT RECIPIENT agrees to provide SMDC access to the site from date of execution of this Subgrant Agreement to completion of all cleanup actions.
20. **Project Completion.** The SUBGRANT RECIPIENT agrees to begin the project within 30 days of this Subgrant Agreement and will complete all work in a timely manner.
21. **Indemnification.** Throughout the term of this Agreement, the SUBGRANT RECIPIENT shall require that all project contractors agree to protect, indemnify, defend and hold harmless, SMDC, its officers, administrators, agents, employees, local partners and all other persons or legal entities to whom the SUBGRANT RECIPIENT may be liable from, for or against any and all claims, demands, suits, losses, damages, judgments, costs and expenses, whether direct, indirect or consequential and including, but not limited to, all fees, expenses and charges of attorneys and other professionals, court costs, and other fees and expenses for bodily injury, including death, personal injury and property damage, arising out of or in connection with the performance of any work or any responsibility or obligation of the SUBGRANT RECIPIENT as provided herein and caused in whole or in part by any act, error, or omission of the SUBGRANT RECIPIENT, its agents, servants, employees or assigns.
22. **Waivers.** Any forbearance by SMDC with respect to any of the terms and conditions of this Agreement and associated subgrant documents shall in no way constitute a waiver of any of SMDC's rights or privileges granted hereunder.

VII. EVENTS OF DEFAULT

23. The SUBGRANT RECIPIENT shall be deemed to be in default under this Subgrant Agreement upon the occurrence of one or more of the following events:
- A. **Conveyance/Assignment.** The SUBGRANT RECIPIENT assigns this Agreement or any subgrant funds advanced hereunder or any interest herein to a third party, or, if the Property or any interest therein is conveyed, assigned or otherwise transferred without the prior written consent of SMDC;
 - B. **False Warranty.** Any representation or warranty made herein or in any report, certificate, financial statement or other instrument furnished in connection with this Agreement or the subgrant documents shall prove to be false in any material respect;
 - C. **Failure to Perform.** The SUBGRANT RECIPIENT defaults by failing to perform a term or condition of the Agreement, and fails to correct the default within a period of time specified in a written default notice sent by certified mail from SMDC to the SUBGRANT

RECIPIENT. SMDC may at its discretion extend the time period for correction of the default;

In event of default or if the SUBGRANT RECIPIENT does not complete the cleanup, SMDC will access the site, ensure that the site is secure and poses no immediate threat to human health and the environment, and notify EPA and the QEP. In this event, SMDC may: (1) terminate the Subgrant Agreement; and (b) institute an action to recover damages against the SUBGRANT RECIPIENT to the full extent of the law. The SUBGRANT RECIPIENT hereby expressly waives any presentment, demand, protest or notice of any kind.

VIII. MISCELLANEOUS

24. **Assignment.** The SUBGRANT RECIPIENT shall not assign or attempt to assign directly or indirectly any of its rights under this Agreement, or under any instrument referred to herein, without the prior written consent of SMDC. The SUBGRANT RECIPIENT shall not assign all or any portion of the Property made the subject of this Agreement without the prior written consent of SMDC.
25. **Parties to Contract.** The provisions of this Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement is not intended to create or vest any rights in any third party or to create any third party beneficiaries.
26. **Amendments.** All amendments to this Agreement shall be in writing and signed by both parties hereto, and may not be supplemented or amended through the introduction of parol evidence.
27. **Performance.** It is expressly understood that a failure or delay on the part of the SUBGRANT RECIPIENT in the performance, in whole or in part, or any of the terms of this Agreement, if such failure is attributable to an Act of God, fire, flood, riot, insurrection, embargo, emergency or governmental orders, regulations, priority, or other limitations or restrictions, or other similar unforeseen causes beyond the reasonable control of such party, the failure or delay shall not constitute a breach or default under this Agreement however, the SUBGRANT RECIPIENT shall use its best effort to insure that the Project is completed in a reasonable time without unnecessary delay.
28. **Failure of Parties.** No failure of either party to exercise any power or right given it hereunder or to insist on strict compliance by the other party with its obligations hereunder, and so custom of practice of the parties at variance with the terms hereof shall constitute a waiver of the other party's right to demand at any time exact compliance with the terms hereof.
29. **Representatives.** All notices, requests, instructions or other documents to be given hereunder to either party by the other shall be in writing and delivered personally or sent by certified or registered mail, postage prepaid, to the addresses set forth in this Agreement. Any such notice, request, instruction or other document shall be conclusively deemed to have been received and be effective on the date on which personally delivered or, if sent by certified or registered mail, on the day mailed to the parties as follows:

TO GRANT RECIPIENT: Snowy Mountain Development Corporation
613 NE Main
Lewistown, MT 59457

TO SUBGRANT RECIPIENT: Roundup Public Schools
700 3rd Street West
Roundup, MT 59072

Or, to such other address as a party may subsequently specify in writing to the other party.

30. This Agreement and all covenants, agreements, representations and warranties made herein shall survive the execution of this Agreement and shall continue in full force and effect until the Project for which Roundup Public Schools is responsible is completed and documentation of all funds expended by Roundup Public Schools has been received by SMDC.
31. If any provision or item of this Agreement is held invalid, such invalidity shall not affect other provisions or items of this Agreement that can be given effect without the invalid provisions or items, and to this end, the provisions of this Agreement are hereby declared severable.
32. Except for any exhibits, attachments, or other documents as may be affixed hereto, made a part hereof, and properly identified herewith, this Agreement constitutes the entire contract between the parties, and shall not be otherwise affected by any other purported undertaking, whether written or oral.
33. The SUBGRANT RECIPIENT understands and agrees that any use of the Property or any activity thereon which is inconsistent with the foregoing provisions is expressly prohibited.
34. Except for applicable provisions of federal law and regulations, this Subgrant Agreement or any action brought under this Agreement shall be governed by and constructed in accordance with the laws of the State of Montana.

IN WITNESS HEREOF, the undersigned representative of the SUBGRANT RECIPIENT and of SMDC certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to execute and legally bind such party to this document, as of the day and year first written above.

SUBGRANT RECIPIENT:

Roundup Public Schools

By: Thomas M. Vandenberg
Thomas M. Vandenberg, Chair
Board of Trustees, Roundup Public Schools

Date: 9/12/2017

GRANT RECIPIENT:

Snowy Mountain Development Corporation

By: Kathie A. Bailey
Kathie Bailey, Executive Director
Snowy Mountain Development Corporation

Date: 9/12/2017

EXHIBIT I

Project: Hazardous substance (asbestos and lead paint) abatement of property located in Roundup, MT in Musselshell County, MT which is owned by Roundup Public Schools.

Property Address: Central School Campus, 600 1st St. W, Roundup, MT 59072

Geocode: 23-1717-13-3-49-01-0000

Levy District: 23-0605-55IN

Legal Description: MILWAUKEE LAND CO 1ST RNDP, S13,T08 N, R25 E, BLOCK 006, Lot 001, LTS 1-12 BLK 6 MIL LAND CO 1ST ADD RDP

Neighborhood: 223.202.C

Subdivision: MILWAUKEE LAND CO 1ST RDP